for the first time on 19th January, 1972, no doubt in connection with this case and found him a well-built and rational man. The plaintiff complained to Dr. Mohandas of a permanent type of headache which got worse when working in the sun and said that he felt a lot better in an air-conditioned room and that he had a tendency to forget recent events. The doctor said that the plaintiff's headache was a subjective complaint which was difficult to verify, but the fact (which the doctor found) that the plaintiff could not smell well indicated that the complaint might well be genuine, and I find as a fact that this complaint is genuine, namely, that the plaintiff as a result of the accident suffers from recurring headaches, particularly when he is out in the sun.

At the time of the accident the plaintiff was 24 and had been working as a lorry attendant for the second defendant for about a year at a salary of $200 a month. At that time he had no driving licence and could not drive, but about two years ago to better his employment prospects he obtained a driving licence but was unable to get a permanent job either as a lorry attendant or driver because his recurring headaches prevented him from working long hours continuously. He goes hunting occasionally with friends in Raub but does not take an active part, and being a trumpet-blower also tries to play in a band but apparently not successfully.

Counsel for the plaintiff (citing no reported decisions) submits that the plaintiff should get general damages of $14,000, but counsel for the defendants submits that the plaintiff should get only $3,000 and he cites notes of two cases *Low Hork Guan*[1] and *Woon Joke Buay*.[2]

Taking into account the fact that the plaintiff had a fracture of the occipital bone, has suffered a diminution of his sense of smell, that he has lost a $200 a month job, that he tends to get a headache when he goes out in the sun, that this makes it difficult for him to work long hours continuously and therefore to obtain a permanent job and the fact that he is otherwise sound in mind and limb and is not therefore prevented from pursuing other, especially indoor, occupations, I am of the opinion that $7,500 would be a fair amount to award him by way of general damages, and I hereby order accordingly.

I also award him $150 agreed special damages.

I also award the plaintiff costs of this trial.

Judgment for the plaintiff.

Solicitors: *Inderjit Singh; Kam Woon Wah & Co.*

RAMOO & ANOR. v. PUBLIC PROSECUTOR

[A.Cr.J. (Sharma J.) March 6, 1972]

[Ipoh — Perak Criminal Appeal No. 9 of 1972]

Road Traffic — Licence — Non-compliance with conditions — Weight — Presumption — Certificate of accuracy — Road Traffic Ordinance, 1958, ss. 120(2) and 143(7).

The appellants were convicted of an offence under section 120(2) of the Road Traffic Ordinance. It was alleged that the first appellant, in breach of the condition of a licence, carried a load of 23 tons 15 cwts. instead of the maximum permissible laden weight of 360 cwts., and that the second appellant permitted the use of the vehicle with the said excess weight.

A certificate of accuracy in respect of the weigh-bridge was issued on December 7, 1970, the validity and effect of which lasted for a period of 8 months from the date of examination. However, on the prosecution's own evidence there was a breakdown of the weigh-bridge on March 24, 1971. The appellants were alleged to have committed the offence on March 30, 1971. The next certificate was not issued until July 12, 1971.

Held, allowing the appeal: there was nothing in the prosecution case to establish the charge against the appellants apart from the presumption which arose under section 143(7) of the Road Traffic Ordinance. However, since the validity and effectiveness of the certificate issued on December 7, 1970, did not hold good until a fresh certificate was issued, the presumption was not applicable in the present case as there was no valid and effective certificate of accuracy in existence.

MAGISTRATE'S CRIMINAL APPEAL.

Ng Chee Kong (*Chin Fook Yen* with him) for the appellants.

Haidar bin Mohamed Noor (Deputy Public Prosecutor) for the respondent.

Sharma J.: The appellants were convicted of an offence under section 120(2) of the Road Traffic Ordinance in that the first appellant in breach of the condition of the licence carried a load of 23 tons 15 cwts instead of the maximum permissible laden weight of only 360 cwts and that the second appellant permitted the use of the vehicle with the said excess weight. A presumption arises under section 143(7) that the weight recorded by the weigh-bridge or the weighing machine is accurate if there is a certificate issued by a public servant in charge of the weigh-bridge or the weighing machine (in this case the Inspector of Weights and Measures) that the weigh-bridge was examined by him and found to be accurate. The validity and effect of the certificate lasts for a period of 8 months from the date of the examination. The presumption under section 143(7) is only a rebuttable presumption. In the present case the weigh-bridge was examined by the Inspector of Weights and Measures on the 7th December, 1970 and a certificate of accuracy issued on that date. There was, however, on the prosecution's own evidence a breakdown of the weigh-bridge on the 24th March, 1971. The weigh-bridge having broken down, the validity and effectiveness of the certificate issued on the 7th December, 1970 did not hold good until a fresh certificate was issued if the prosecution was to rely upon any presumption under section 143(7) of the Road Traffic Ordinance. The next certificate however was not issued until the 12th July, 1971 by the Inspector of Weights and Measures. The effect of this is that the prosecution could not rely upon the presumption under section 143(7) between the 24th March, 1971 and the 12th July, 1971.

The appellants are alleged to have committed the offence on the 30th March, 1971. There was nothing in the prosecution case to establish the charge against the appellants apart from the presumption. That presumption was not applicable in the present case. The prosecution could however, if it had so desired, prove its case by other reliable evidence but that was not done. The onus to establish the guilt of the accused lay heavily on the prosecution and unless that onus was discharged there was no reason to call upon the accused to enter the defence. For these reasons the appeal is allowed and the order of the learned magistrate set aside.

Appeal allowed.

Solicitors: *Ng Chee Kong.*

PUBLIC PROSECUTOR v. TANGGAAH (No. 2)

[R.Cr.J. (Sharma J.) March 27, 1972]

[Ipoh — Criminal Revision No. 12 of 1972]

Criminal Law and Procedure — Revision — Bail — Forfeiture of — Recording of grounds of proof — Issue of notice to bailor — Criminal Procedure Code (F.M.S. Cap. 6) ss. 404(1) 443, Second Schedule, Form Nos. III, XLII.

In this case, in the court below, one Ramadu had stood surety to the bond executed by the accused. The accused failed to appear before the learned magistrate on November 8, 1971, as a result of which a warrant of arrest was issued against him.

On November 13, 1971, the learned magistrate issued a notice to the bailor Ramadu, requiring him to produce the accused at the court of the magistrate, Bruas, on December 10, 1971. The bailor appeared before the learned magistrate who made an order that the bailor was to pay $50.00 to the Government of Malaysia for a breach of the bail as there were two consecutive occasions of the bail being jumped.

Held: (1) the court acts without jurisdiction if it forfeits the bond without recording the grounds of proof that a bond had been forfeited. In this case the bond was for the appearance of the accused before the court, and the records being before the court, the bail bond and the fact that there was a failure to appear, was enough to enable the court to forfeit the bond and there was no need for any further record of grounds of proof. However, a notice had to be sent to the bailor as envisaged in section 404(1) and as exemplified in Form No. XLII in the Second Schedule to the Criminal Procedure Code. In this case as this required notice was not issued, the order of the learned magistrate could not stand and the order requiring the bailor to pay the sum of $50.00 was to be set aside and the said sum refunded to him;

(2) there is no undertaking in the prescribed bond that the bailor is bound to attend the court himself personally or produce the accused in court on each day of the hearing.

REVISION.

Haidar bin Mohamed Noor (Deputy Public Prosecutor) for the Public Prosecutor.

Bailor in person.

Sharma J. (delivering oral judgment): I had called for the records of Bruas magistrate's court arrest case No. 88 of 1970 (*Public Prosecutor* v. *Tanggaah @ Thangiah*). While going through the records I discovered that one Ramadu s/o Appanah had stood surety to the bond executed by the accused in the said criminal case. The accused failed to appear before the learned magistrate on the 8th November, 1971 and the learned magistrate issued a warrant of arrest against him. On the 13th November, 1971 the learned magistrate issued a notice to the bailor Ramadu requiring him to produce the accused at the court of the magistrate, Bruas, on the 10th December, 1971. The bailor appeared before the learned magistrate and the record made by the learned magistrate on that day reads as follows: —

"Accused present in Court.

Prosecuting Officer: Ibrahim.

Accused absent: 25.10.71 — Medical Certificate.
8.11.71.

Bailor: not necessary to come to court not aware of the proceedings.

Order of the court:

The bailor to pay $50.00 to the Government of Malaysia for a breach of the bail as there are 2 consecutive occasions of the bail being jumped.

Accused to get another bailor in the sum of $300.00."

Section 443 of the Criminal Procedure Code relates to the forms which may be used for the various purposes for which they have been prescribed under the Code. The section allows their use with such variations as the circumstances may require. Form No. XLII deals with a notice to be sent to the surety on breach of a bond. It specifically requires the bailor to pay the penalty or show cause within a specified number of days why payment of the sum should not be enforced against him. This form is to be found in the second schedule to the Criminal Procedure Code and is as much a part of the Code as any other portion of it. These forms are naturally not supposed to be exhaustive and do not override any express provision of the Code. They are, however, useful in throwing light on such sections of the Code in connection with which their use has been prescribed. The bail bond prescribed under the Code is to be found in Form III and the relevant portion so far as it relates to the surety to a bail bond reads:

"I do hereby declare myself surety for the above-named of , that he shall attend before the Magistrate's Court at on the day of next, to answer to the charge on which he has been arrested, and shall continue so to attend until otherwise directed by the court; and, in case of his making default therein, I hereby bind myself to forfeit to the Yang di-Pertuan Agong the sum of dollars."

There is no undertaking in the prescribed bond that the bailor is bound to attend the court himself personally or to produce the accused in court on each day of the hearing. Section 404 of the Criminal Procedure Code deals with the procedure on forfeiture of a bond and that provision being of a penal nature has to be strictly construed. The court acts without jurisdiction if it forfeits the bond without recording the grounds of proof that a bond had been forfeited. In this case, however, the bond was for the appearance of the accused before the court and the records being before the court, that is the order for bail, the bail bond and the fact that there was a failure to appear was enough to enable the court to forfeit the bond